IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 6702/2003

UNION BANK OF INDIA Vs. DISTRICT JUDGE, KOTA & ORS.

DATE: 11.09.2007

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. R.K. Kala for the petitioner.
Mr. Suresh Sahni for the respondent No.3.

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The respondent No.3 Shri Prahlad Snehi was posted as Branch Manager in the petitioner-Bank at Baran. During this period, he committed grievous misconduct and misused his powers and allowed loans and draft illegally to various parties. FIR No 245/96 was also lodged against the respondent No.3 at Police Station Kotwali, Baran under Sections 406, 409, 420 and 120 IPC. After lodging the FIR, the respondent No.3 was suspended vide order/letter dated 23.03.96 and was served with two charge-sheets on 14.09.96 and 28.10.96.

Thereafter the respondent No.3 filed a declaratory civil suit for permanent injunction before the Additional Civil Judge (Jr. Division) & Judicial Magistrate No.3, Kota and has also filed an application under Order 39 Rule 1 & 21 for restraining the

petitioner from proceeding with the enquiry till the decision of the criminal case arising out of FIR No. 245/96.

The Judicial Magistrate No.3, Kota after hearing the arguments on temporary injunction application, passed an order dated 09.11.98 restraining the petitioner from proceeding with the enquiry till the decision of the criminal case, against which the petitioner Bank preferred an appeal before the District Judge, Kota and the same was dismissed vide order dated 08.04.99 upholding the order dated 09.11.98 passed by the Additional Civil Judge (J.D) and Judicial Magistrate No.13, Kota.

Aggrieving and dissatisfying with the orders dated 09.11.98 and 08.04.99 passed by the Additional Civil Judge (J.D) and Judicial Magistrate No.13, Kota and the District Judge, Kota respectively, the petitioner filed a revision petition before this Court which was registered as S.B. Civil Revision Petition No. 1103/199 and that too was dismissed by this Court vide order dated 06.08.2003 on the basis of an amendment of 1999 in Section 115 of CPC following the decision of the Hon'ble Supreme Court in the case of Shiv Shakti Co-operative Housing Society, Nagpur Vs. M/s Swaraj Developers.

Hence, this writ petition has been preferred by the petitioner-Bank under Article 227 of the Constitution of India as the Hon'ble Supreme Court in the case of **Surya Dev Raj Vs. Ramchandra Ray and others, JT 2003(6) 465,** has held that that writ petitions under Articles 226 and 227 of the Constitution of India in the matter of civil suit are maintainable.

Learned counsel for the petitioner submits that vide impugned order dated 09.11.98 passed by the Additional Civil Judge (J.D) and Judicial Magistrate No.13, Kota and the order dated 08.04.99 passed by the District Judge, Kota staying the enquiry is contrary to the ratio decided by the Hon'ble Supreme Court and in support of his submissions, he placed reliance on the judgment rendered in the case of **State of Rajasthan Vs. B.K. Meena and others, (1996) 6 SCC 417,** wherein it has been held by the Hon'ble Supreme Court that stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the Supreme Court's decisions.

Learned counsel for the petitioner also referred the judgment rendered by the Hon'ble Supreme

Court in the case of **Hindustan Petroleum Corporation Ltd. & Ors. Vs. Sarvesh Berry, 2005(1) S.L.R. 641,** wherein the Hon'ble Supreme Court has held that where there is a delay in disposal of criminal proceedings, departmental proceedings can be initiated so that the conclusion can be arrived at an early date and High Court erred in staying the departmental proceedings against the employee.

Similar view has been taken by the Division Bench of the Jodhpur High Court in the case of **Govind Kalwani Vs. Raj. High Court, Jodhpur, 2003 WLC (Raj.) UC 552**, wherein it has been held by the Division Bench that if the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the criminal case, can be resumed and proceeded with so as to conclude them at an erly date, so that if the employee is found not guilty, is honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

Per contra, learned counsel appearing for the respondent No.3 contended that the Court can stay the departmental proceedings when the charges are grievous in nature and admittedly the charges are grievous in nature and, therefore, vide impugned order dated

09.11.98 proceedings of the enquiry have been stayed till the disposal of the suit. In support of his submissions, the learned counsel Mr. Sahni placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Yeshwant Sakhalkar And Another Vs. Hirabat Kamat Mhamai And Another, (2004) 6 SCC 71,** and further submits that the Court can direct the Civil Court to decide the suit expeditiously.

I have heard rival submissions of the respective parties and have also gone through the impugned order dated 09.11.98 passed by the Additional Civil Judge (J.D) and Judicial Magistrate No.13, Kota and the order dated 08.04.99 passed by the District Judge, Kota. I also carefully gone through judgments referred by the respective parties.

The judgments referred by the learned counsel for the petitioner is no doubt empowered that normally enquiry proceedings should not be stayed but if the charges are grievous nature, enquiry can be stayed and if the criminal case is likely to be decided at an early date, the disciplinary proceedings/ enquiry can be proceeded with in such eventuality.

In view of these facts, as the petitioner also challenged the orders impugned passed by the Courts below on the ground of jurisdiction as the respondent

No.3 was posted as Branch Manager in the petitioner Bank at Baran and could have invoke the jurisdiction of Baran Court but he has filed the civil suit before the Court of Additional Civil Judge (J.D) and Judicial Magistrate No.13, Kota.

Both the Courts below have considered this aspect and observed that the order of suspension and charge-sheet were received by the respondent No.3 at his residence at Kota and in view of the settled proposition of law, part cause of action is made available to the respondent No.3 at Kota.

So far as challenge to the impugned orders by the petitioner on the ground of jurisdiction, I am not convinced and both the Courts below have rightly rejected the objections regarding jurisdiction raised by the petitioner.

Now considering the submissions made on behalf of the parties and the ratio decided by the Hon'ble Supreme Court, it is no doubt that the suit is pending since long, therefore, in the interest of justice, I deem it proper to direct the Civil Court to decide the suit in question within a period of three months from the date of receipt of certified copy of this order and the parties are also expected to co-operate with the proceedings for early disposal of the suit and in case

the Civil Court is not able to decide the suit within a period of three months, the petitioner is at liberty to proceed with the disciplinary enquiry as held by the Hon'ble Supreme Court in the case of **State of Rajasthan Vs. B.K. Meena And Others (supra)** and in the case of **Hindustan Petroleum Corporation Ltd. & Ors. Vs. Sarvesh Berry (supra).**

With the observations made herein above, the writ petition stands disposed of.

(K.S. RATHORE),J.

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